

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

KEMYAH WASHINGTON

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CRIMINAL NO. 1:CR-07-401

(Judge Rambo)

MEMORANDUM

Before the court is a request for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). Petitioner seeks to have his sentence reduced as a result of the United States Sentencing Commission's amendment to the crack cocaine revision of the drug quantity table at § 2D1.1(c). Apparently in recognition of the case of *United States v. Mateo*, 560 F.3d 152 (3d Cir. 2009), which held that the amendment does not apply to career offenders, Petitioner seeks to have his career offender status revised.

There are three ways a judgment of conviction that is final can be modified. Title 18 U.S.C. § 3582(b) provides as follows:

(b) **Effect of finality of judgment.** – Notwithstanding the fact that a sentence to imprisonment can subsequently be –
(1) modified pursuant to the provisions of subsection (c);
(2) corrected pursuant to the provisions of Rule 35 of the Federal Rules of Criminal Procedure and section 3742; or
(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;
a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

As set forth above, Petitioner does not qualify for relief under subsection (c)(2), which is the basis of his petition. He does not qualify for relief under Federal Rule of Criminal Procedure 35 as more than one year has elapsed since his sentence became final. Thirdly, the Third Circuit Court of Appeals has affirmed the legality and

reasonableness of Petitioner's sentence. *See United States v. Washington*, No. 08-4181 (slip op. Dec. 16, 2009).

Petitioner is not entitled to relief. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: February 16, 2011.

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ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY
ORDERED THAT:**

- 1) Defendant's motion filed pursuant to 18 U.S.C. § 3582(c)(2) is denied.
- 2) This court declines to issue a certificate of appealability.
- 3) The clerk of court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: February 16, 2011.